U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-R-P-

DATE: JAN. 8, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an elementary school special education teacher, seeks classification as a member of the professions holding an advanced degree, and asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. *See* Section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. We dismissed the Petitioner's appeal on March 18, 2013, and subsequent motion to reconsider on November 5, 2013. The Petitioner filed two additional motions to reopen and reconsider and we granted the motions to reopen, dismissed the motions to reconsider and affirmed the denial of the petition on April 21, 2014, and August 26, 2014, respectively. The Petitioner then filed a motion to reopen. We granted the motion and affirmed the denial of the petition on May 12, 2015. The matter is now before us on a motion to reopen. The motion to reopen will be denied, our May 12, 2015, decision will be affirmed, and the petition will remain denied.

As discussed in our previous decisions, a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *Abudu*, 485 U.S. at 110.

Our most recent decision stated: 1) "the Petitioner's motion did not include any new facts or other documentary evidence to overcome the grounds underlying our previous findings," 2) "[t]he [P]etitioner has not shown that the proposed benefits of her work are national in scope," and 3) "the [P]etitioner has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement." *See Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (setting forth several factors that must be considered when evaluating a request for a national interest waiver, including whether the proposed benefit will be national in scope, and whether a petitioner's past history of achievements indicate that she will serve the national interest to a substantially greater degree than would an available U.S. worker with the same minimum qualifications).

As in her previous motions, rather than address our previous findings, the Petitioner describes her personal circumstances. She expresses her interest in continuing "to work for a year or two so that I can pay all my debts here in the [United States] before I go home to my country of origin if permanent residence is not granted." We have advised the Petitioner in our prior decisions that humanitarian concerns cannot establish eligibility for this employment-based immigration benefit. Moreover, a motion seeking to reopen an immigrant petition is not the forum to request authorization to work in the United States for a period of one or two years.

On motion, the Petitioner offers copies of previously submitted documents and recent information regarding a nomination for a local, county-level award, evidence of her volunteer activities, and other professional development activities. Our previous decisions advised the Petitioner that any new exhibits supporting a motion to reopen must still establish her eligibility as of the date of filing, in this case May 2, 2012. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that U.S. Citizenship and Immigration Services (USCIS) cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Therefore, we cannot consider the Petitioner's accomplishments which postdate the filing of the petition. Regardless, none of the new materials confirm the Petitioner's eligibility for the benefit sought as they do not show that her work as a teacher is national in scope or that her past record of achievement is at a level that would justify a waiver of the job offer requirement.

We affirm our prior decision for the above stated reasons. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reopen is denied.

Cite as *Matter of J-R-P-*, ID# 14988 (AAO Jan. 8, 2016)